

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

UNITED STATES OF AMERICA

v.

ALAN HEATH

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§

5:23CR23

**RECOMMENDATION ON WITHDRAWAL OF GUILTY PLEA
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Court for administration of the guilty plea under Rule 11 of the Federal Rules of Criminal Procedure.

On June 7, 2024, this cause came before the undersigned United States Magistrate Judge for guilty plea of the Defendant on Count Six of the Indictment. Count Six of the Indictment charges a violation of 21 U.S.C. § 841 (a)(1), possession with intent to distribute a mixture containing Fentanyl. After conducting said proceeding in the form and manner prescribed by Fed. R. Crim. P. 11, the undersigned recommended the Court accept the Plea. Dkt. No. 29. The Court accepted that recommendation on June 12, 2024. Dkt. No. 31.

That initial Plea Agreement included a provision that allowed for the Defendant to withdraw his plea of guilty “if the court determines that U.S.S.G. 4B1.1” applies. Dkt. No. 25, ¶ 7. The Presentence Investigation Report found that U.S.S.G. 4B1.1 does apply, and Defendant has decided to withdraw his plea of guilty. Counsel for the Government and Defendant explained this reasoning at the November 5, 2024 hearing, where Defendant also offered a guilty plea in accordance with a Second Plea Agreement.

In light of paragraph 7 of the initial Plea Agreement, and the comments at the November 5 Hearing, the undersigned recommends that the Court allow Defendant to withdraw his initial plea

of guilty and vacate its June 12 Order Adopting. Both parties waived their objections to the recommendation.

IT IS THEREFORE RECOMMENDED that the District Court accept the withdrawal of Defendant's June 7, 2024 plea of guilty and vacate the June 12, 2024 Order Adopting (Dkt. No. 31).

The undersigned will enter a second Findings of Fact and Recommendation concerning Defendant's November 5, 2024, plea of guilty separately.

SIGNED this the 5th day of November, 2024.



J. Boone Baxter
UNITED STATES MAGISTRATE JUDGE